IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.1238/07

Mahipal **Versus** State

DATE OF ORDER :: 29/11/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. S.M. Ali, for petitioner
Mr. Arun Sharma, Public Prosecutor for State
Mr. Rajesh Choudhary for Mr. Biri Singh, for complainant

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Instant petition has been filed assailing order of framing charges against accused-petitioner for offence u/ss.363, 376, 342 & 379 IPC vide order dated 18th May, 2007.

FIR was registered against accused-petitioner for offence u/ss.u/ss.363, 376, 342 & 379 IPC and after investigation, challan was filed. Since it was a case to be tried by Court of Sessions as such the matter was committed to Court of Session vide order dated 15th March, 2007 and it appears from the ordersheets which have been placed on record that after committal on 23rd March, 9th April, 23rd April, 3rd May, and 10th May, 2007, on some occasion counsel for accused was not present and on some occasion, he sought time to make submission. But, the ultimate fact is that no one argued on behalf of petitioner despite the fact that he remained present and brought from

judicial custody on 18th May, 2007 which was next date. Learned Sessions Judge after examining charge sheet framed charges against him which he denied and requested to face trial and as regards the objection which he had raised by submitting application dt.09/04/07, it has been specifically mentioned in the ordersheets that he has not pressed the said application. After framing of charges, statements of prosecution witnesses were recorded. It appears from the ordersheets that on 12th June, 2007 statement of PW-1 Kavita [Prosecutrix] was recorded and on 13th June, 2007 statements of PW-2 Farooq, PW-3 Sri Ram & PW-4 Roda Ram were recorded. All four prosecution witnesses were cross-examined by counsel for petitioner and thereafter, on 2nd August, 2007, statements of further prosecution witnesses i.e. PW-5 Narayan & PW-6 Vidhyadhar were recorded.

It has been informed to this court that there are in all nine prosecution witnesses out of which by 2nd August, 2007, six were recorded.

Only contention advanced by counsel for petitioner is that no reasonable opportunity of hearing was afforded to the accused-petitioner at the stage of framing charge and thus, there is a clear breach of Section 228 of the Code and even if statements are recorded thereafter will be of no legal significance. Since there is a basic defect which certainly has defeated the right of

accused-petitioner provide under law subsequent proceedings are of no legal significance.

From the perusal of ordersheets placed on record, of which reference has been made above, after committal of case to learned Sessions Judge vide order dated 15th March, 2007, opportunity was afforded to the accused to make submission. So far as framing of charge is concerned and atleast on six occasions, either lawyer was not present or he sought time to make submission and thus, on 18th May, 2007 in the presence of accused, learned Sessions Judge has framed charges against accused-petitioner, which he denied and requested to face trial and whatever objection which has been raised earlier in his application dt.09/04/07 he has not pressed the same. It is apparent from the record that reasonable opportunity was afforded to accused petitioner and after framing of charge, trial commenced, statements of prosecution witnesses were recorded which has been cross-examined by counsel for petitioner. This court does not find any substance in the submission made by counsel for petitioner.

Consequently, the misc. petition fails and is hereby dismissed.

[AJAY RASTOGI],J.